

## REMARKS

### Introduction

In the Office Action, Examiner states: It is noted in claim 1(a) the antibiotic tested for is either a beta lactam or from a different antibiotic family, but the sample would not contain both. Applicant has amended claim 1 to clearly reflect that antibiotics from multiple families, including beta lactams, may be present in the sample and can, combined or alone, provide a positive result.

### Rejection under 35 U.S.C. 103(a)

Claims 1-10, 12, 14-17, 24-37 were rejected under 35 U.S.C. §103(a) as being unpatentable over Markovsky (6,319,466) in view of Charm (4,239,745).

Neither Markovsky nor Charm describes sensitivity adjustment of a microbial culture growth inhibition test. Similarly, neither Markovsky nor Charm describes sensitivity adjustment of a microbial growth inhibition test to one, but not all, of the families to which that test culture is sensitive.

Markovsky refers to sensitivity adjustment of a lateral flow strip test. In the Markovsky test strip a labeled, family specific, microbial receptor is used for detection of antibiotics within a single family. Markovsky describes using residue specific antibodies to adjust the test sensitivity of the lateral flow test to individual antibiotics within the

single family to which the lateral flow test is sensitive. That is different from sensitivity adjustment, to a single family of antibiotics, of a microbial culture growth inhibition test having sensitivity to multiple antibiotic families.

Charm refers to microbial culture tests in the background section, but does not discuss test sensitivity adjustment.

It would not have been obvious to a skilled artisan, given Markovsky alone or in combination with Charm, to add a microbial receptor to a microbial culture inhibition test for the purpose of adjusting the test sensitivity of the test to the antibiotics within a single family to which that test is sensitive, namely the beta lactam family.

Robert S. Salter, in his Declaration, submitted with the Request for Continued Examination, describes the unpredictable nature of the art and the long felt and unmet need in the industry for a culture growth inhibition test with adjusted sensitivity to a family subgroup of antibiotics, such as the beta lactam family (Declaration of Robert S. Salter, paragraphs 17, 18 and 19.) Markovsky and Charm was not an obvious combination to resolve that long felt need.

Applicant believes that the Office's concerns have been addressed. The rejection with respect to claim 1, and the claims depending therefrom, is, therefore, respectfully traversed. Withdrawal of the rejections of claims 1-10, 12, 14-17, 24-37 under 35 U.S.C. 103(a) and favorable consideration is respectfully requested based on the amendments and remarks above. Applicant notes that claims 67-79 are newly added.

### CONCLUSION

Applicant believes that the above amendments and remarks are fully responsive to the Office Action, thereby placing this application in condition for allowance and such action is respectfully requested. Applicant respectfully notes that because Applicant has addressed certain comments of the Office does not mean that Applicant concedes other

comments of the Office. Further, the fact that Applicant has made arguments for the patentability of some claims does not mean that there are not other good reasons for the patentability of those or other claims.

Applicant requests speedy reconsideration, and further requests that the Examiner contact its attorney if there are any remaining issues.

Please charge any outstanding fees or credit any overpayments to Deposit Account No. 50-3152, Ref. No. 0656-032US3A.

Respectfully submitted,

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## Appendix

1. (currently amended) A method for detecting the presence of an antibiotic in a test sample, whereby said antibiotic can be an antibiotic from a beta-lactam family, an antibiotic from a one additional family, multiple antibiotics all from the same family or multiple antibiotics from a combination of families, comprising the steps of:

- a) combining the sample with both a microbial culture and a microbial receptor, the culture comprising a microbial species susceptible to both the beta-lactam family and the one additional family of antibiotics, the microbial receptor characterized by its sensitivity to the beta-lactam family, the microbial receptor having been extracted from a bacteria with sensitivity to the beta-lactam family, whereby contacting the susceptible microbial species with an antibiotic to which the culture is susceptible causes growth inhibition in the culture;
- b) growing the culture; and
- c) determining an amount of culture growth,

wherein a lack of culture growth reflects a presence of an antibiotic and wherein the test sensitivity to the beta-lactam family is reduced by combining the sample with the microbial receptor.